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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1172

NATIONAL MUFFLER DEALERS ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA.

BRIEF FOR PEPSI-COLA BOTTLERS ASSOCIATION, INC. AS AMICUS CURIAE

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BRIEF FOR PEPSI-COLA BOTTLERS ASSOCIATION, INC. AS AMICUS CURIAE

With the consent of the Petitioner and the United States, Pepsi-Cola Bottlers Association, Inc. submits this brief as *amicus curiae.*

Statement of Interest

Pepsi-Cola Bottlers Association, Inc. (hereinafter sometimes referred to as "PCBA") is an association of individuals, firms and corporations engaged in the manufacture and sale of Pepsi-Cola and other beverages and is organized as a not-for-profit corporation under the laws of Illinois. PCBA has been held by the Court of Appeals for the Seventh Circuit to be exempt from federal income taxation as a business league under Section 501(c)(6) of the Internal Revenue Code of 1954, as amended (the "Code"), 26 U.S.C. § 501(c)(6). *Pepsi-Cola Bottlers' Association* v. *United States,* 369 F.2d 250 (7th Cir. 1966), *aff'g* 65-2 U.S. Tax

Cas. (CCH) ¶ 9705 (N.D. Ill. 1965). The decision of the Second Circuit in the present action squarely conflicts with the holding of the Seventh Circuit and, for the reasons set forth herein, should be reversed.

The Commissioner of Internal Revenue challenged PCBA's exempt status and assessed income tax on PCBA in 1959; PCBA brought an action in the district court to obtain a refund, and its claims were sustained by the courts. *Pepsi-Cola Bottlers' Association* v. *United States,* 65-2 U.S. Tax Cas. (CCH) ¶ 9705 (N.D. Ill. 1965), *aff'd,* 369 F.2d 250 (7th Cir. 1966). The government argued in both the district court and the court of appeals in that case, as it does herein, that because the members of PCBA were franchisees of a single franchisor, their activities did not constitute the promotion of business conditions of a "line of business" and that therefore PCBA did not qualify as an exempt business league. Both the district court and the Seventh Circuit rejected this argument and held that PCBA qualified for exemption under Section 501(c)(6) of the Code. *Id.*.

The Second Circuit has now explicitly declined to follow that decision. *National Muffler Dealers Association* v. *United States*, 565 F.2d 845, 847 n.1 (2d Cir. 1977). Moreover, the stated grounds of decision in the opinion appealed from—*i.e.*, that an organization whose members are franchisees of a single franchisor is not a "business league" for purposes of Code Section 501(c)(6)—directly affect the tax status of PCBA. Therefore, with the consent of the parties, PCBA is filing this brief in support of the decision of the Seventh Circuit, to urge reversal of the decision of the Second Circuit and to preserve its rights as a not-for-profit business league to exemption from federal income taxation.

Opinions Below

The findings of fact, conclusions of law and order of the district court are unreported, but are attached as Appendix B to the Petition for Writ of Certiorari filed by the Petitioner herein. The opinion of the court of appeals, *National Muffler Dealers Association* v. *United States,* 565 F.2d 845 (2d Cir. 1977), affirming the decision of the district court, is attached as Appendix A to the Petition for Writ of Certiorari.

Questions Presented

1. Whether the courts below applied the proper standards for determining whether a trade association, not organized for profit and no part of the net earnings of which inures to the benefit of any individual member or shareholder, is a business league qualifying for exemption from income tax under Section 501(c)(6) of the Code.

2. Whether the fact that all of the members of a trade association are franchisees of a single franchisor automatically precludes such an organization from qualifying as a business league exempt from federal income taxation under Section 501(c)(6) of the Code.

Statement of Facts

The Pepsi-Cola Bottlers Association as *amicus* restates briefly the salient facts of the case which are pertinent to the issues discussed in this brief and further presents an outline of its own organization, purposes and activities, in order to clarify the positions taken herein.

As found by the district court, the Petitioner, National Muffler Dealers Association, Inc., is a corporation or-

ganized under the New York Not-For-Profit Corporation Law as a trade association of "Midas Muffler" franchisees. Findings of Fact of the district court (hereinafter, "Finding") No. 1. Throughout the Petitioner's history, its membership has been made up exclusively of Midas Muffler franchisees. Finding 7. The principal activities of the Petitioner are: acting as a bargaining representative for its members in their dealings with their franchisor, Midas International Corp., the publication of a newsletter, the holding of annual conventions and the administration of group insurance programs for its members. Finding 10.

The district court further found as facts that "Midas dealers alone do not constitute a line of business" and that "[t]here is no evidence of any direct benefit to the public" conferred by the Petitioner. Findings 13, 14.

The court made no finding as to whether any part of the net earnings of the Petitioner inures to the benefit of any private shareholder or individual, nor was there a finding as to whether the Petitioner engages in a regular business of a kind ordinarily carried on for profit or whether the purpose of the Petitioner is the performance of particular services for individual persons; there is no indication in the record that these matters were in issue.

PCBA resembles the Petitioner in that each is an association of franchisees of a single franchisor, organized as a not-for-profit corporation to promote the common interests of its members. In the case of PCBA, all members hold exclusive trademark license agreements with PepsiCo, Inc. (hereinafter, "PepsiCo") authorizing them to perform the functions of manufacturing and distributing Pepsi-Cola and other PepsiCo beverage products. The membership of PCBA is composed of the holders of 468 such franchises granted by PepsiCo throughout the United States.

In addition, some of the functions performed by the Petitioner, including the administration of group insurance programs for members and the publication of newsletters, are similarly performed by PCBA.

Unlike the Petitioner, PCBA is not the official bargaining agent for its members in their individual negotiations with their franchisor. PCBA's role vis-à-vis PepsiCo is primarily to act as a "sounding board"—that is, PCBA, working through committees of members, may collect and synthesize its members' responses on various PepsiCo policies in such areas as marketing, packaging, standardization and management development, communicate the concerns of the bottlers on these issues to PepsiCo, and discuss how such problems as may arise can best be worked out.

In addition to these "sounding board" functions, PCBA, again largely through committees composed of members, gathers and disseminates to its members information on developments in such areas as quality control and management education; promotes participation in management education programs offered by PepsiCo to bottlers' employees; conducts legislative work and litigation on matters of interest to the membership generally and in the name of PCBA; and as mentioned above, acts as administrator of several voluntary group insurance policies for members only, sponsoring trusts which actually receive and process the premiums. PCBA performs no functions which are designed to benefit an individual member, or a group of members, as distinguished from the membership as a whole.

PCBA is funded entirely by dues fixed according to the amount of concentrate purchased by each member from PepsiCo during the previous year, by special assessments, when needed, in the same ratio as dues, and by reimburse-

ment of PCBA by the group insurance trusts for the cost of administration of the programs.

All funds taken in by PCBA are in turn expended in furtherance of the common business purposes of the members. Any surplus is held in reserve against deficit years such as have occurred several times in the past, and again is eventually to be used for the furtherance of the members' common purposes. No distribution or rebate of funds has ever been made to any member. The by-laws of PCBA provide that, upon dissolution, all of its assets are to be distributed to the Red Cross or another charitable organization.

Many of the members of PCBA bottle soft drinks or beverages other than those of PepsiCo. Thus, PCBA members manufacture and distribute the brands of other trademark owners (though not other cola beverages). The PCBA membership, taken as a whole, is involved in the manufacture and sale of virtually every other significant non-cola soft drink brand in this country.

There is no general association composed exclusively of soft drink bottlers. The National Soft Drink Association (NSDA) is composed of manufacturers of soft drink concentrate and syrups (the trademark owners) and others with an interest in the soft drink industry, in addition to bottlers. Approximately 80% of the current members of PCBA also belong to this group. While some activities of NSDA overlap those of PCBA, particularly in the area of legislative work and, to some extent, in the area of standardization, PCBA performs many functions in these areas, as well as in such areas as dissemination of market information and management education, which its members can support through no other trade association.

Governing Statute and Regulation

Statute:

Section 501 of the Code provides in pertinent part as follows:

> (a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.
>
> . . . .
>
> (c) . . .
>
> (6) Business leagues, chambers of commerce, real-estate boards, or boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Regulation:

Treas. Reg. § 1.501(c)(6)-1 further defines the term "business league" in the following terms:

> A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of

particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of section 501(c)(6) and is not exempt from tax. Organizations otherwise exempt from tax under this section are taxable upon their unrelated business taxable income.

Legislative History:

The exemption from federal income tax for business leagues, boards of trade and chambers of commerce was instituted in the Revenue Act of 1913, ch. 16, 38 Stat. 114, the first federal income tax law enacted after ratification of the Sixteenth Amendment, and received only cursory legislative explanation.

The original House version of the Act, H.R. 3321, 63rd Cong., 1st Sess., had contained relatively little particularization of the kinds of non-profit organizations which were to be exempt from the income tax, apparently due to the view of Representative Cordell Hull, principal author of the Act, and others that "any kind of society or corporation that is not doing business for profit and not acquiring profit would not come within the meaning of the taxing clause of Paragraph G" of Section II of the Act,

taxing the "entire net income" of corporations, joint-stock companies and associations. 50 Cong. Rec. 1306 (1913).

Section II of the Act was amended in the Senate Finance Committee, to provide that nothing in the bill would apply to "business leagues, nor to chambers of commerce or boards of trade, not organized for profit of a private stockholder or individual; nor to any league or organization not organized for profit, but operated exclusively for the social welfare." S. Rep. No. 80, 63rd Cong., 1st Sess. 25-26 (1913). These trade association categories were added to a list of other exempt organizations, accompanied by the qualifying phrase, "not organized for profit or no part of the net income of which inures to the benefit of any private stockholder or individual." Ch. 16, § II, ¶ G(a), 38 Stat. 172.

The Committee Report is silent as to the purpose of the amendment; and the Committee of the Conference, which accepted the amendment without change, also offered no explanation. *See* H.R. Rep. No. 86, 63rd Cong., 1st Sess. 26 (1913).

While amendment of the bill so as to describe exempt organizations in more detail may have represented some advance in the conceptualization of "income" over that expressed by Representative Hull, the more explicit legislative history of companion exemptions suggests that Congress may have been more concerned with the administrative waste involved in taxing truly not-for-profit associations than with advancing any particular public purpose. Thus, in reorganizing and expanding the exemption clauses in the Revenue Act of 1916, so as to include *inter alia* the predecessor of the current Section 501(c)(7), the Ways and Means Committee said:

> It was deemed advisable to specifically extend the exemption to other corporations similar to those enumer-

> ated in the present law as exempt from tax in view of the fact that the experience of the Treasury Department has been that the securing of returns from them has been a source of expense and annoyance and has resulted in the collection of either no tax or an amount which is practically negligible.

H.R. Rep. No. 922, 64th Cong., 1st Sess. 4 (1916).

Without explanation in the committee reports or floor debate, Congress at that time also amended the business league, chamber of commerce and board of trade exemption proviso so as to read, "not organized for profit *and* no part of the net income of which inures to the benefit of any private stockholder or individual." Revenue Act of 1916, ch. 463, § 11(a), 39 Stat. 766 (emphasis added).

The business league exemption was reenacted in the Revenue Acts of 1918, 1921, 1924, 1926, 1928, 1932, 1934 and 1936, and incorporated in the Internal Revenue Codes of 1939 and 1954, all without discussion or substantive change.[1]

The Treasury Regulation interpreting the statutory exemption of business leagues has been in effect, again with-

[1] Revenue Act of 1918, ch. 18, § 231(7), 40 Stat. 1076; Revenue Act of 1921, ch. 136, § 231(7), 42 Stat. 253; Revenue Act of 1924, ch. 234, § 231(7), 43 Stat. 282; Revenue Act of 1926, ch. 27, § 231(7), 44 Stat. 40; Revenue Act of 1928, ch. 852, § 103(7), 45 Stat. 813 (including "real estate boards" for the first time); Revenue Act of 1932, ch. 209, § 103(7), 47 Stat. 193; Revenue Act of 1934, ch. 277, § 101(7), 48 Stat. 700; Revenue Act of 1936, ch. 690, § 101(7), 49 Stat. 1674; Revenue Act of 1938, ch. 289, § 101(7), 52 Stat. 481; Internal Revenue Code of 1939, § 101(7). Section 501(c)(6) was amended in 1966 to include a separate section making clear that a professional football league will not lose the benefit of the exemption by virtue of the fact that it administers a pension fund for football players. Act of Nov. 8, 1966, Pub. L. No. 89-800, § 6(a), 80 Stat. 1515, explained at H.R. Rep. No. 2308, 89th Cong., 2d Sess. 9-10 (1966).

out substantial change (apart from the addition of a reference to the "unrelated business income" provisions of the Code), since 1929.[2] As noted by the court of appeals, the Regulation has been recognized as having the force of law. *National Muffler Dealers Association* v. *United States*, 565 F.2d 845, 847 (2d Cir. 1977); *Indiana Retail Hardware Association* v. *United States*, 366 F.2d 998, 999 (Ct. Cl. 1966) and cases cited.

Summary of Argument

The decision below applies an incorrect and unworkable standard for determining whether a trade association qualifies as a non-profit business league eligible for exemption from income tax under Section 501(c)(6) of the Code.

It is the position of PCBA (1) that the court of appeals erroneously required that the Petitioner show that its activities directly benefited the general public; (2) that the court of appeals misread the "line of business" language of Treas. Reg. § 1.501(c)(6)-1 as setting a minimum standard of industry-wide membership of an exempt business league, whereas in fact the language merely clarifies the requirement that such an organization serve the common interests of its membership as opposed to the particular interests of its individual members; (3) that the policy of avoiding administrative waste requires rejection of the interpretation of the court of appeals in favor of the proper standard based on commonality of interests and

[2] Treas. Reg. 74 (1929 ed.), Art. 528; Treas. Reg. 77 (Revenue Act of 1932), Art. 528; Treas. Reg. 86 (Revenue Act of 1934), Art. 101(7)-1; Treas. Reg. 101 (Revenue Act of 1938), Art. 101(7)-1; Treas. Reg. 103 (1939 Code), § 19.101(7)-1; Treas. Reg. 111 (1939 Code), § 29.101(7)-1; Treas. Reg. 118 (1939 Code), § 39.101(7)-1.

the use of appropriate means to serve those interests; (4) that in light of these arguments, a trade association whose members all manufacture or distribute a particular branded product may under appropriate circumstances qualify for exemption from federal income tax as a business league; and (5) that application of the proper standard of law to the facts found in the district court requires reversal of the decision of the court of appeals.

I.

A. The structure of Section 501(c) of the Code makes it clear that Section 501(c)(6) does not contemplate a showing of direct public benefit. Section 501(c) creates a hierarchy of not-for-profit organizations and the statute and regulations state explicitly the degree of contribution to the social welfare required under each subsection. *See* §§ 501(c)(3)-501(c)(7).

In the case of Section 501(c)(6) and Treas. Reg. § 1.501 (c)(6)-1, the only "public benefit" required is the indirect benefit assumed to flow from joint action by businessmen to improve their shared business conditions. Such action is necessarily directed to advancing the competitive business interests of the members, and business league status has consistently been granted to organizations representing narrow shared interests so long as advancement of the members' *common* interest is shown to be the primary purpose of the organization. *See American Plywood Association* v. *United States*, 267 F.Supp. 830, *modified on other grounds*, 67-2 U.S. Tax Cas. (CCH) ¶ 9568 (W.D. Wash. 1967); *American Fishermen's Tuna Boat Association* v. *Rogan*, 51 F.Supp. 933 (S.D. Cal. 1943); *Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17; Rev. Rul. 67-252, 1967-2 C.B. 195.

B. The court of appeals based its affirmance of the district court on the further premise that Treas. Reg. § 1.501 (c)(6)-1 imposes a substantive requirement that a trade association represent an entire "line of business"—interpreted by the court as a minimum percentage of market share or a minimum number of competitive products—in order to qualify for federal income tax exemption. *See National Muffler Dealers Association* v. *United States*, 565 F.2d 845, 847 (2d Cir. 1977). Such a reading is foreign to the purposes of the Regulation as it has been construed by the courts and by the Internal Revenue Service. The distinction drawn by the relevant language of the Regulation is not between broad and narrow industry groups, but between activity directed to the common interests of the membership in improving the conditions which underlie their respective businesses and activity directed to generating particular profits or economies for individual members. *See, e.g., Washington State Apples, Inc.*, 46 B.T.A. 64, *acq.* 1942-1 C.B. 17; *Leaf Tobacco Exporters Association*, 10 Tax Ct. Mem. Dec. (CCH) 706 (1951).

C. The exemption is designed to serve the purpose of avoiding the administrative waste involved in collecting taxes on the incidental income of truly not-for-profit organizations as well as to promote the indirect benefit thought to flow from joint action to improve business conditions. *See* H.R. Rep. No. 922, 64th Cong. 2d Sess. 4 (1916). This purpose of administrative efficiency would be subverted by the substitution of a standard bearing no relation to the potential for abuse of the exemption by avoidance of the recognition of substantial taxable income, but based instead on breadth of market coverage, for the standards which are specifically mandated by the Regulations and which have been applied effectively by the courts for many years.

D. An association of persons selling a branded product, or of franchisees of a common franchisor, is subject to the same standards under Section 501(c)(6) as is any other not-for-profit trade association. No coherent theory could support a blanket denial of the exemption to such associations without rewriting the history of Section 501(c)(6) and rejecting its traditional construction. *Pepsi-Cola Bottlers' Association* v. *United States*, 369 F.2d 250, 252 (7th Cir. 1966); *cf. Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17; Rev. Rul. 67-252, 1967-2 C.B. 195.

II.

A. The application by the court of appeals of an incorrect standard to the determination of the Petitioner's appeal constitutes reversible error in light of findings of fact in the district court which support the Petitioner's claim to tax-exempt status and of the absence of a finding of any purpose which would disqualify the Petitioner for exemption from federal income taxation. The district court found that the Petitioner is an association of members with a common business interest and a purpose to further that interest. Findings 1, 10, 12. There is no finding indicating that the Petitioner was primarily engaged in furnishing particular services to its members within the meaning of the Regulation, that the earnings of the Petitioner inure to the benefit of its members or that the Petitioner is engaged in a business of a kind ordinarily carried on for profit. Accordingly, the decision of the court of appeals should be reversed and judgment entered for the Petitioner.

B. In the alternative, the case must be remanded to the district court for further findings of fact on issues relevant to whether the Petitioner is primarily engaged in the performance of particular services for individual members or in the furtherance of the common interests of its members.

ARGUMENT

I.

A Trade Association Operating Only in the Common Interest of Its Members May Qualify as a Business League Exempt From Federal Income Taxation Under Section 501(c)(6).

The government would deny the Petitioner tax exemption as a business league on two interrelated grounds:

> (1) that there must be evidence of "direct benefit to the public" by reason of the Petitioner's activities for the exemption to apply; and
>
> (2) that the language of the Regulation, that an organization's activities be "directed to the improvement of business conditions of *one or more lines of business*" (emphasis added), requires that a trade association, to be exempt, must represent the entire spectrum of competitive businesses in a given industrial or commercial field.

PCBA respectfully contends that the language, policy, legislative history and judicial interpretation of Section 501(c)(6) directly contravene both of these assertions.

A. *To Qualify for Exemption Under Section 501(c)(6), an Association Need Not Show That Its Activities Directly Benefit the Public.*

Qualification of a trade association for exemption under Section 501(c)(6) requires no showing of public benefit beyond that deemed to flow from the improvement of busi-

ness conditions among its members. This is best made clear by an examination of the statute itself—the five most relevant subsections of Section 501(c) being subsections (3) through (7).[3]

Congress has determined that the types of private voluntary organizations described in these provisions, by reason of their beneficient purposes and non-profit character, should be exempt from federal income tax. The directness with which an organization seeking exemption must serve an identifiable public interest, as distinguished from the common interest of its members, depends upon the subsection under which it seeks to qualify; and the statute creates a hierarchy under which the required directness diminishes as the exempting subsections proceed.

Thus, to qualify under Subsection (3), the organization must foster such well-recognized public purposes as the relief of the poor or under-privileged, the advancement of religion, or the defense of human or civil rights, Treas. Reg. §1.501(c)(3)-1(d)(2), the instruction or training of individuals for the improvement of their capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community, Treas. Reg. §1.501(c)(3)-1(d)(3), or the carrying on of scientific research in the public interest, Treas. Reg. §1.501(c)(3)-1(d)(5)(i).[4]

[3] Subsection (3) of Section 501(c) exempts certain religious, charitable, educational and like organizations. Subsection (4) exempts civic leagues or organizations operated for the promotion of social welfare. Subsection (5) exempts labor, agricultural or horticultural organizations. Subsection (6), the provision in issue here, exempts business leagues, chambers of commerce, boards of trade and real-estate boards. Subsection (7) exempts social and recreational clubs.

[4] Contributions made to Section 501(c)(3) organizations may be deductible by donors in computing their own federal income taxes, as well as estate and gift taxes, under Sections 170, 642(c),

An organization which does not meet this stringent standard may nevertheless qualify for exemption under Subsection (4) if it is primarily engaged in promoting in some way the common good and welfare of the people of the community—that is, if it is operated primarily for the purpose of bringing about civic betterments or social improvements. Treas. Reg. §1.501(c)(4)-1(a)(2). For example, an association devoted to preservation of a historic community could not qualify under Subsection (3) because its activities were for the benefit of residents of the community, who comprised its voting members; nevertheless, because it served a purpose of civic betterment it qualified under Subsection (4). Rev. Rul. 67-6, 1967-1 C.B. 135, *modified on other grounds,* Rev. Rul. 76-147, 1976-1 C.B. 151; *see similarly* Rev. Rul. 75-286, 1975-1 C.B. 210.

Similarly, an organization which cannot meet the standard of Subsection (4) may qualify under Subsection (5), if it has as its object the betterment of the conditions of those engaged in labor, agricultural, or horticultural pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. Treas. Reg. §1.501(c)(5)-1(a). In like manner, an organization may qualify for exemption under Subsection (6) even though it fails to meet the standards of Subsection (4), by reason of its failure to operate for the purpose of civic betterment or social improvement, Treas. Reg. §1.501(c)(4)-1(a)(2)(ii), and even though it fails to qualify under Subsection (5), because the requisite improvement of the conditions of all persons engaged in the specified pursuits (as distinguished from the members themselves) arises only indirectly. Rev. Rul. 67-252,

2055, 2106(a)(2) and 2522 of the Code. This is not true of contributions made to other types of exempt organizations referred to herein.

1967-2 C.B. 195. To complete the hierarchy, an organization can qualify for exemption under Subsection (7) if it serves only the pleasure, recreation or other non-profitable purposes of its members. Treas. Reg. § 1.501(c)(7)-1(a); *see, e.g.*, Rev. Rul. 73-520, 1973-1 C.B. 180.

The Congressional intendment, confirmed in the judicial decisions and Internal Revenue Service rulings, is clear that, to be exempt under Section 501(c)(6), an organization need serve no public interest beyond that which accrues from the improvement of the conditions under which the businesses of its members are conducted. This Court, too, has recognized in dictum that business league classification is appropriate for a mutual benefit organization whose activities are "largely animated by [a] commercial purpose." *Better Business Bureau* v. *United States*, 326 U.S. 279, 284-85 (1945).

The common purpose of promoting the production and sale of a given product has often been recognized as a qualifying interest in the "improvement of business conditions." Thus, the Internal Revenue Service has ruled, without any further finding of public benefit, that an organization is exempt as a business league where its "purpose is to improve business conditions among its members who are packers, processors and distributors of [a] processed agricultural product by promoting their common business interest in the development, sale and use of the product." Rev. Rul. 67-252, 1967-2 C.B. 195. So, too, has the association of a populous but narrowly defined group (tuna boat owners), organized for the purpose, among others, of protecting their interests in dealing with their powerful, highly concentrated market (the canning industry), been held to be directed toward "the improvement of business conditions" so as to qualify for exemption as a business league. *American Fishermen's Tuna Boat*

Association v. *Rogan*, 51 F. Supp. 933 (S.D. Cal. 1943). Similarly, an association directed to the promotion of Washington State apples has been held exempt. *Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17. *See also* Rev. Rul. 65-164, 1965-1 C.B. 238 (multi-employer bargaining group qualifies as exempt business league, since its services in negotiating contracts for the membership, mediating or settling jurisdictional and other disputes, and furnishing information all furthered "the common purpose" and did not "represent services to individual members which they could purchase elsewhere." 1965-1 C.B. at 239).

The government, despite the cited Internal Revenue Service rulings and acquiesence, sought below to derive a "public benefit" requirement from the opinion of Judge Swan in *Produce Exchange Stock Clearing Association* v. *Helvering*, 71 F.2d 142 (2d Cir. 1934). There the court denied exemption under the predecessor of Section 501(c)(6) to an organization performing securities clearing services for its members, who were brokers trading on the Produce Exchange. Judge Swan remarked that organizations granted exemption under the predecessor of Section 501(c) "are evidently granted exemption because of the benefit to be derived by the public from their activities." *Id.* at 143.

This statement cannot, however, be wrenched from its context to establish an overriding principle of statutory construction. Certainly Judge Swan cannot be thought to have established that, for example, a social club cannot be exempt under what is now Section 501(c)(7) unless the pleasure of its membership serves a broader public purpose. The issue before him was the exemption of an organization which charged a specific per-transaction fee to each individual member for which it performed a totally sep-

arate service of no benefit to any other member. The organization manifestly was engaged in performing "particular services for individual persons" within the meaning of Treas. Reg. § 1.501(c)(6)-(1) and its then-applicable predecessor—a circumstance which concededly bars exemption under Section 501(c)(6).

The statement quoted above must therefore be read in conjunction with Judge Swan's closely following pronouncement that there was no apparent reason "for exempting an association which merely serves *each member* as a convenience or economy in *his* business." 71 F.2d at 143 (emphasis added). The case thus forms part of a long line in which associations making separate per-transaction charges for services rendered to individual members, as opposed to engaging in activities for the *common benefit* of its members and primarily financed by dues or assessments based on general formulae not correlated to any specific service received, cannot qualify for exemption. *See, e.g., Contracting Plumbers Cooperative Restoration Corp.* v. *United States,* 488 F.2d 684, 687 (2d Cir.), *cert. denied,* 419 U.S. 827 (1974) (repair of excavations made by members, with charge to members for each job at rate previously charged by city for such repairs); *Southern Hardwood Traffic Association* v. *United States,* 411 F.2d 563, 564 (6th Cir. 1969) (collection of freight claims and transit refunds for individual members on commission basis); *United States* v. *Oklahoma City Retailers Association,* 331 F.2d 328, 331 (10th Cir. 1964) (operation of credit information service, where charges for credit ratings accounted for nearly all Association income); *Evanston-North Shore Board of Realtors* v. *United States,* 320 F.2d 375, 378-79 (Ct. Cl. 1963), *cert. denied,* 376 U.S. 931 (1964) (operation of multiple real estate listing service for members, with fee assessed for each listing and for each commission received through a listing).

On the contrary, where the performance of particular services for individual members is not involved, whatever public benefit is required has been found in the undoubted benefit to the public of the organization's improvement of the common field of business endeavor in which its members are engaged. *See, e.g., American Plywood Association* v. *United States,* 267 F. Supp. 830, *modified on other grounds,* 67-2 U.S. Tax Cas. (CCH) ¶ 9568 (W. D. Wash. 1967). A fundamental premise of our pluralistic, market-oriented economy is that effective competition among contending interests best serves the consumer and the society as a whole. The Seventh Circuit thus adopted a correct interpretation of the statutory purpose in reasoning as follows:

> The [Pepsi-Cola Bottlers] Association falls within the scope of § 501(c)(6) and the regulations . . . . To be a business league it need not be devoted entirely to the general public welfare. Its operations do contribute to the improvement of Pepsi-Cola bottling business and hence to public consumers, unlike the operations considered in Produce Exchange Stock Clearing Ass'n, Inc. v. Helvering, 2 Cir., 1934, 71 F.2d 142, which did merely provide the convenience of clearing house facilities for a limited group of individual traders in securities.

Pepsi-Cola Bottlers' Association v. *United States,* 369 F.2d 250, 252 (7th Cir. 1966).

B. *To Qualify for Exemption Under Section 501(c)(6), an Association Need Not Represent an Entire Industry.*

The courts below appear to have assumed—without discussion—that the governing Treasury Regulation demands that a trade association, to be exempt, must represent the entire spectrum of competitive businesses in a given indus-

trial or commercial field—in this case the muffler industry. That assumption invests the phrase "directed to the improvement of business conditions of one or more lines of business" with a weight and specific content totally out of keeping with its position and evident function. While an industry-wide grouping may be appropriate in other contexts, such as determining a "relevant market" in an antitrust setting, it has no inherent relevance to the definition of a common business interest.

Viewed in the context of Section 501(c) of the Code, the reference to the purpose of improving conditions in a line of business is to be contrasted with the purposes which fall on either side. The greater purpose is to promote social welfare or conditions of all persons in a particular occupation, and is required for exemption under Section 501(c)(4) or (5). *See* Treas. Reg. §1.501(c)(4)-1(a)(2)(ii); Rev. Rul. 67-252, 1967-2 C.B. 195. The lesser purpose, which results in disqualification under Section 501(c)(6), is to perform particular services for individual persons; the Regulation's language is: ". . . the improvement of business conditions in one or more lines of business *as distinguished from* the performance of particular services for individual persons" (emphasis added). The fair intendment of the "improvement of business conditions . . ." language is only to require that the activities of the organization be directed to improving the business conditions of its membership *in common*, and not individually, in the sense that its contribution to the business of any one member be only at a step removed, through advancement of the interests of the membership as a whole. It is merely a restatement or reinforcement of the Regulation's first-stated rule: "A business league is an association of persons having some *common business interest*, the purpose of which is to promote *such common interest* . . ." (emphasis added). There simply is no minimum industry-wide coverage requirement.

Much has been made in the opinions below of Judge Swan's invocation of the doctrine of *noscitur a sociis, Produce Exchange Stock Clearing Association* v. *Helvering*, 71 F.2d 142, 144 (2d Cir. 1934), under which an organization seeking exemption under Section 501(c)(6) must possess the general characteristics of a board of trade or a chamber of commerce. But this establishes no standard of global beneficence.

It should be self-evident that any trade association or chamber of commerce promotes the business interests of a limited group at the peril of others who may have a contrary interest. A chamber of commerce which finances an industrial park to induce enterprises to locate in a community no doubt serves the common interest of local business, but at the necessary expense of the common interest of businesses located elsewhere. An organization which promotes the use of plywood undoubtedly does not represent the interests of those who manufacture competing building materials. An association of "independent," non-manufacturer tobacco dealers may have purposes which conflict with the interests of dealers who are also manufacturers. The common interest of tuna fishermen may not be the interest of those harvesting other kinds of fish—or raising cattle. And surely the promotion of Washington State apples in an economy of falling demand will damage the prospects of apples grown elsewhere.

Yet in each of these cases an organization, not performing particular services for individual persons, serves a common interest of the type contemplated by Section 501(c)(6). Rev. Rul. 70-81, 1970-1 C.B. 131; *American Ply-*

wood Association v. *United States,* 267 F.Supp. 830, *modified on other grounds,* 67-2 U.S. Tax Cas. (CCH) ¶9568 (W.D. Wash. 1967); *Leaf Tobacco Exporters Association,* 10 Tax Ct. Mem. Dec. (CCH) 706 (1951); *American Fishermen's Tuna Boat Association* v. *Rogan,* 51 F. Supp. 933 (S.D. Cal. 1943); *Washington State Apples, Inc.,* 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17.

The general characteristics of a board of trade or a chamber of commerce, to which the *noscitur a sociis* doctrine refers us, are precisely the advancement of the common business interest of a defined, and limited, group. It does not matter whether the interested group is broad or narrow. As the Internal Revenue Service has recently ruled, even a neighborhood business association may be exempt. Rev. Rul. 78-225, 1978-24 I.R.B. 13. What matters is the promotion of a common business interest and its promotion by appropriate means.

At bottom, the cases denying exemption under Section 501(c)(6) and its predecessor sections, while often citing the "line of business" language, deny exemption because the organizations involved performed *particular* services for *individual* members or engaged in a business of a kind regularly carried on for profit. They may have promoted a business interest, but not in common or not by appropriate means.

This group includes the many cases in which the organization, as any business might, performed particular services in consideration of a per-transaction fee. *See* cases cited at p. 20 *supra.* The very fact that a member of an organization is prepared to pay a transaction fee is testimony that he perceives a benefit to him not shared in common with others—that the benefits of the organization accrue directly to his business and in direct proportion to the particular amount he pays.

Beyond those cases are several more where, regardless of the method of payment, the courts simply determined that the organization involved was engaged in activities which were of a kind customarily or usually carried on by business organizations for profit. *E.g., General Contractors' Association* v. *United States,* 202 F.2d 633 (7th Cir. 1953) (performance of quantity surveys); *Northwestern Municipal Association* v. *United States,* 99 F.2d 460 (8th Cir. 1938) (aiding bondholders in enforcement of payment of obligations due them from municipalities); *Glass Container Industry Research Corp.* v. *United States,* 70-1 U.S. Tax Cas. (CCH) ¶9214 (W.D. Pa. 1970) (operation of research laboratory).

There is no quarrel with the principle that the activities of each organization claiming exemption must be examined to determine whether they promote the identified common interest by appropriate means—to ascertain whether a commercial business is being carried on or whether particular benefits are bestowed on individual members. PCBA respectfully contends, however, that the need to do so arises in contexts both broader and narrower and cannot invest the "line of business" language of the Regulation with a fixed meaning which *a priori* precludes exemption for any category of trade associations.

C. *Applying the Exemption to a Trade Association Operating Only in the Interest of Its Members Serves the Purpose of Administrative Convenience Without Inviting Abuse.*

As suggested in the discussion of legislative history at pp. 8-11 *supra,* Section 501(c)(6) appears designed to serve a dual purpose: First, the exemption from federal income taxation protects and encourages the kind of indirect public benefit which flows from not-for-profit trade associations serving the common interests of their memberships; and second, the exemption promotes administrative efficiency

by obviating the need for organizations to compute and pay, and for the government to collect, income tax where the structure, purposes and activities of the organizations are such as to assure no more than the incidental accrual of net taxable income from year to year. *See* H.R. Rep. 922, 64th Cong., 2d Sess. 4 (1916).

The interpretation of the statute and regulation contended for in Parts IA and IB *supra* is fully consonant with these objectives. The tests for exemption—whether the primary purpose is to serve the common or joint business interests of the membership, as opposed to the several interests of individual members, and whether the association is engaged in a regular business of a kind ordinarily carried on for profit—provide precisely the safeguards necessary to prevent abuse of the exemption as a means of avoiding or deferring taxation on income which would otherwise be reported by its members.

Direct gain to members is, of course, barred by the statute's requirements that an exempt business league not be organized for profit and that no part of its earnings inure to the benefit of any private shareholder or individual. This precludes any form of monetary distribution by an exempt business league to its members, including *non pro rata* rebates of charges assessed for such purposes as the use of demonstration space at trade shows organized by the association. *Michigan Mobile Home & Recreational Vehicle Institute* v. *Commissioner,* 66 T.C. 770 (1976); *see similarly National Chiropractic Association* v. *Birmingham,* 96 F. Supp. 874 (N.D. Iowa 1951) (payment of judgments against individual members in suits for malpractice or unauthorized practice of medicine); *Wholesale Grocers Exchange,* 3 Tax Ct. Mem. Dec. (CCH) 699 (1944) (distribution of royalties from licensing of association trademark).

Conversely, the absence of any such distributions, coupled with adequate assurance that none will take place (as by a provision in the by-laws of the organization directing that all income must be applied to the common purposes of the members, or that upon dissolution the assets of the association will pass to a charitable organization), has been cited as evidence that a business league passes the "inurement of net earnings" test. *Crooks* v. *Kansas City Hay Dealers' Association,* 37 F.2d 83, 86-87 (8th Cir. 1929); *American Refractories Institute,* 6 Tax Ct. Mem. Dec. (CCH) 1302, 1305 (1947).

More indirect possibilities of abuse are also ruled out by the proscriptions against inurement of net earnings to the benefit of members, against operation of a business ordinarily carried on for profit and against performance of particular services for individual members. The first two prevent use of the "business league" format to avoid recognition of income derived from third parties through operation of a joint venture. *National Association of Display Industries* v. *United States,* 64-1 U.S. Tax Cas. (CCH) ¶ 9285 (S.D.N.Y. 1964); *American Automobile Association,* 19 T.C. 1146, 1162 (1953). And the "business for profit" and "particular services for individual members" prohibitions combine to prevent use of an exempt business league primarily to perform functions for which the individual members would otherwise ordinarily contract with other enterprises or which they would ordinarily perform internally at greater cost.

Courts have frequently tested the qualification of associations for exemption by ascertaining whether the organization performs activities in competition with any profit-making businesses. *Compare Retailers Credit Association* v. *Commissioner,* 90 F.2d 47 (9th Cir. 1937) *and Glass Container Industrial Research Corp.* v. *United States,*

70-1 U.S. Tax Cas. (CCH) ¶ 9214 (W.D. Pa. 1970) *with National Leather & Shoe Finders Association*, 9 T.C. 121 (1947), *acq.* 1947-2 C. B. 3. The analogous test for use of a trade association to perform functions which otherwise would be performed by each member internally is often phrased in terms of whether the organization serves primarily to provide "a convenience and economy" in the operation of its members' businesses. *E.g., Produce Exchange Stock Clearing Association* v. *United States*, 71 F.2d 142, 143 (2d Cir. 1934); *Evanston-North Shore Board of Realtors* v. *United States*, 320 F.2d 375, 378 (Ct. Cl. 1963), *cert. denied*, 376 U.S. 931 (1964).

A further conceivable area of abuse of the business league exemption would be the building of a large surplus in excess of current operating expenses, thereby allowing members to convert what would be taxable profits into dues or assessments, deductible as ordinary and necessary business expenses under Section 162 of the Code and Treas. Reg. § 1.162-15(c), without a correlative stimulus to the exempt purpose. The likelihood is that the self-interest of the members would preclude such a use of a business league, even if it were permissible, since a member would be consigning funds to a holder which by assumption can produce no current benefit whatever to the member and which, by application of the principles discussed above, can never use the funds for the direct individual benefit of the member or return the avails of them to him in whole or in part. If nevertheless a business league were formed with such a scheme in mind, however, exemption could undoubtedly be denied on the ground that a primary purpose of the association was the performance of investment services for the individual members. *Cf. Produce Exchange Stock Clearing Association* v. *Helvering*, 71 F.2d 142 (2d Cir. 1934).

The adequacy of the traditional tests to serve the Congressional purpose is further demonstrable by examining the actual consequences of imposing the income tax on a trade association organized and functioning in a manner designed to serve the common interests of its members, performing no particular services for individual members, operating no regular business of a kind ordinarily carried on for profit and retaining only such reserves as are reasonable to assure the continuance of current operations. Since the organization can conduct no substantial profitmaking activity, the taxable income would be limited to the extent of any surplus of contributions by members over deductible expenditures plus any incidental interest or investment income (again, by assumption, not in a large enough amount to constitute the organization of an investment vehicle for the members). This amount could be reduced to zero each year merely by limiting dues and relying on special assessments rather than holding even small reserves. Finally, any amount actually taxed would be offset by roughly half through the business expense deduction taken by each member, under Section 162 of the Code, for the cost of the additional contribution to the organization required to finance its payment of the tax.

The imposition of income tax on such an organization would thus have three main results: (1) a substantial amount of administrative inconvenience for both taxpayer and government; (2) the encouragement of a less efficient mode of operating a not-for-profit trade association; and (3) the discouragement of the Congressional purpose to promote joint action for the improvement of shared business conditions. All this would be counterbalanced by little or no contribution to the revenue.

It is evident, therefore, that limitation of the exemption to trade associations which serve only or primarily the common business interests of their members by appropriate means is both necessary and sufficient to the Congressional purpose of avoiding needless entanglement of truly non-profit organizations in the income tax collection process. To read a substantive "entire line of business" requirement into the Regulation on top of adequate constraints which have long been applied would add nothing but the administrative burden which the statute was designed to avoid.

D. *A Trade Association Composed of Franchisees of a Single Franchisor May Qualify for Exemption Under Section 501 (c)(6).*

In taking the position that an association of persons selling a branded product may not qualify for exemption, the government seeks to strike an irrational and unsupportable distinction. It would grant exemption if the common business interest of the members were that they did business in the same neighborhood. Rev. Rul. 78-225, 1978-24 I.R.B. 13. It would grant exemption if the common business interest of the members were in the sale of the same unbranded product. Rev. Rul. 67-252, 1967-2 C.B. 195. The exemption would be conceded if the common business interest were in a generic product produced in a geographic area. *Washington State Apples, Inc.*, 46 B.T.A. 64 (1942), *acq.* 1942-1 C.B. 17. By what measure is it judged that a common interest defined, not by geography or genus, but by brand name is less fit an object of the exemption which Congress has extended? In each case, the members of the association compete in the marketplace with others whose interests the association does not represent.

It may be that the government's view proceeds from the unstated assumption that an association defined by the interest of the members in a single branded product must perforce be operated in the separate interests of its individual members. Does the inference arise from the presumption that membership is limited to a few? For all that appears, the neighborhood business association granted exemption in Rev. Rrl. 78-225, 1978-24 I.R.B. 13, might be a worthier subject of such a presumption. Does the inference arise because the promotion of a product is presumed to carry more direct benefit to those who trade in it when the product is branded than when it is a generic? Such a presumption rests on no more than its bare assertion.

Neither the Internal Revenue Service nor the courts should be obliged to speculate on such matters. A clear, workable standard is established by the statute and the inquiry need go no further. Under Section 501(c)(6), an association is entitled to exemption only if it seeks to promote, by appropriate means, the common interest of its membership as a whole. It cannot serve the separate interests of particular members or groups of members, nor can it engage in activities constituting the conduct of a regular business of a kind ordinarily carried on for profit.

A trade association of franchisees no doubt may fall afoul of these precepts no less than any other kind of trade association, but also no more. The issue is the nature and effect of the activities of the organization given the circumstances in which it carries them on. It is a question to be decided upon the facts presented and not on the basis of maxims or preconceptions.

PCBA respectfully contends, therefore, that this Court should not adopt a rule which renders an organization

automatically ineligible for exemption under Section 501 (c)(6) of the Code by reason of the fact that its members are all franchisees of a single franchisor or for any other reason deal in the same branded product. It respectfully urges that the Seventh Circuit Court of Appeals was correct when it concluded that "[t]he plaintiff Association [PCBA in that case] cannot be disqualified merely because its members all bottle a particular soft drink product. It is unreasonable to write into the statute and regulations a limitation wholly unsupported by the legislative history." *Pepsi-Cola Bottlers' Association* v. *United States,* 369 F.2d 250, 252 (7th Cir. 1966).

II.

The Courts Below Committed Reversible Error in Ordering Judgment for the United States.

A. *The Facts Found by the District Court, Together With the Undisputed Facts on the Record, Are Sufficient to Sustain the Petitioner's Claim to Exemption From Federal Income Taxation Under Section 501(c)(6).*

In light of the arguments advanced in Section I *supra,* the findings of fact made in the district court as to the structure, purposes and activities of the National Muffler Dealers Association sustain the Petitioner's claim to exemption from federal income taxation as a business league under Section 501(c)(6) of the Code.

The Petitioner is an association of members with a common business interest in the promotion and improvement of all aspects of the business of Midas Muffler franchisees (Findings 1, 12); the purpose of the Petitioner is to further that common interest, and the manner in which the Petitioner seeks to further the common interest of its members is by working toward improvement of the conditions within the framework in which the common business interests of the members are determined. According to Finding 10, this is done principally through negotiation with the common franchisor on issues of common interest to the membership (for example the provisions of the basic franchise agreement for the member franchisees, or the franchisor's policy of requiring a service charge for exercise of Midas guarantee rights); by publishing a newsletter (presumably so that the members will have available the maximum possible amount of information of common interest relevant to their business practices); and by holding annual conventions (presumably for a similar purpose).

The Petitioner is not engaged in a business of a kind ordinraily carried on for profit; or, at least, there is no finding of such engagement and no evidence on the record of any activity of the Petitioner which places it in competition with any for-profit or other business. In addition, there is no finding that a primary purpose of the organization is to provide particular services to individual members; indeed, the principal activities and accomplishments of the organization (Findings 10, 11) strongly suggest that the organization seeks to improve the conditions of any one member business only through activities of equal potential benefit to all—the negotiation of common agreements with the franchisor, the free dissemination of information to the entire membership and the initiation and administration of a group insurance program open to all members. Finally, the government has made no claim that any net earnings of the Petitioner inure to the benefit of its members. *National Muffler Dealers Association* v. *United States,* 565 F.2d 845, 846 (2d Cir. 1977). Thus, the Petitioner meets all the requirements for exemption as a business league.

As the facts found by the district court are sufficient to sustain the Petitioner's claim for exemption under Section 501(c)(6) of the Code, the judgment below should be reversed and the case remanded to the district court with instructions to enter judgment for the Petitioner.

B. *In the Alternative, the Facts Found by the District Court Are Insufficient to Support a Determination of the Tax Status of the Petitioner and the Case Must Be Remanded to the District Court for Further Findings of Fact and a Determination in Accordance With the Proper Legal Standard.*

Should this Court hold that the findings of fact of the district court, together with the undisputed facts on the record, are insufficient to support a judgment in favor of the Petitioner, the Court should remand the case for further findings of fact.

In this event the district court should be instructed to consider such relevant matters as: whether any individual charges are ever assessed on particular members for particular services performed by the Petitioner, *compare Evanston-North Shore Board of Realtors* v. *United States,* 320 F.2d 375 (Ct. Cl. 1963), *cert. denied,* 376 U.S. 931 (1964) *with American Plywood Association* v. *United States,* 267 F. Supp. 830, *modified on other grounds,* 67-2 U.S. Tax Cas. (CCH) ¶ 9568 (W.D. Wash. 1967); whether any distributions or rebates of any kind are ever made by the Petitioner to its members, *compare Michigan Mobile Home & Recreational Vehicle Institute* v. *Commissioner,* 66 T.C. 770 (1976) *and Wholesale Grocers Exchange,* 3 Tax Ct. Mem. Dec. (CCH) 699 (1944) *with Texas Mobile Home Association* v. *Commissioner,* 324 F.2d 691 (5th Cir. 1963); whether the work of the Petitioner in the negotiation of agreements with the franchisor and of insurance contacts is ever directed to advancing the interests of, or negotiating an agreement for, any one member or subgroup of members rather than for the entire membership as a whole, *compare National Chiropractic Association* v. *Birmingham,* 96 F. Supp. 874 (N.D. Iowa 1951), *with National Leather & Shoe Finders Association,* 9 T.C. 121 (1946), *acq.* 1947-2 C.B. 3; whether any of the activities of the Petitioner are in direct competition with profit-making businesses, *compare Retailers Credit Association* v. *Commissioner,* 90 F.2d 47 (9th Cir. 1937) *with National Leather & Shoe Finders Association;* and whether a purpose of the Petitioner is the provision of services which would otherwise be performed or purchased by the individual members at greater cost or inconvenience, *see, e.g., Northwest Municipal Association* v. *United States,* 99 F.2d 460 (8th Cir.), *aff'g* 22 F.Supp. 18 (D. Minn. 1938); *American Automobile Association,* 19 T.C. 1146 (1953).

Assuming that the finding on any of these subjects points to a potentially non-exempt purpose, the district court should be instructed to determine whether the activity in question reflects a primary or incidental purpose of the organization, in accordance with the principles of *Trinidad* v. *Sagrada Orden,* 263 U.S. 578 (1924). *Texas Mobile Home Association* v. *Commissioner,* 324 F.2d 691, 695-96 (5th Cir. 1963); *Commissioner* v. *Chicago Graphic Arts Federation,* 128 F.2d 424, 426-27 (7th Cir. 1942).

As contended above, the fact that all members of the Petitioner are franchisees of a single franchisor is not in itself relevant to the determination of this case. Of course, since the problems associated with improving or promoting the franchised product or service, and the relationship of the franchisees with the franchisor, will in this instance determine to a great degree the common business interests of the membership, it is to these shared interests that the court must look in determining whether

the Petitioner's activities are primarily directed toward the improvement of the business conditions which underlie these common interests, or toward serving directly the interests of individual members.

It may be that franchisee associations will meet the test for exemption less frequently than other non-profit trade associations. The nature of the factual inquiry in each individual case must remain the same, however, just as the reasons of public policy and administrative ease which underly the exemption apply with as much force to franchisee associations as to business leagues whose members share other kinds of business interests.

CONCLUSION

The Court should hold that a trade association composed of franchisees of a common franchisor is not automatically precluded from federal income tax exemption as a business league, and the judgment of the Court of Appeals for the Second Circuit should therefore be reversed.

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